

Prison Litigation Reform Act Makes Way for Double Bunking

IF YOU BUILD IT, THEY WILL come. The bad guys, that is, not the ballplayers. It's the "Field of Dreams" analogy applied to modern-day large jail management when there are too many crooks and not enough jail beds. Within months of opening a new jail or expanding an existing one, you're dealing with overcrowding and population releases and federal consent decrees and . . . daydreaming about retirement.

You'll have to find your own way to retire, but maybe this article can help with the other issues. The Multnomah County Sheriff's Office in Portland, Oregon, recently went to court and successfully overturned a federal order that placed a population limit on its primary jail. In about 6 months' time, the county was able to terminate the federal order, double-bunk the correctional facility (adding 200 beds), and

lower the daily cost of housing each inmate.

Here's our story, followed by the chronological legal summation.

SINCE BEFORE ITS OPENING in the early 1980s the Multnomah County Detention Center (MCDC) has been subject to ongoing litigation concerning, among other things, the number of inmates it could house. MCDC inherited these problems when it was built to replace another facility that had been sued over conditions. This class action lawsuit became known locally as the Jordan Order—a federal consent decree applying to all current and future inmates at MCDC. Beginning in 1987 and culminating in a Modified Final Order in 1990, the U.S. District Court for the District of Oregon has mandated many of the operating conditions at MCDC,

including maximum inmate population limits.

The impact of the inmate population restriction has been felt throughout the community. Except in the first few months after opening, the jail has been filled to capacity. In fact, each of our five jails, with a total capacity of 1,953, is full. As a result, hundreds of inmates are released every month before they've completed their sentences.

We've given the population release process a formal name—"Matrix Release"—but it's really just a "get out of jail free" card for the inmate. In 1997, we released an average of 530 inmates each month, a number Sheriff Dan Noelle found completely unacceptable. Early releases were creating public distrust in the system and frustration for the arresting officers. Such releases also removed the penalty of incarceration imposed for breaking the law.

THE FEDERAL COURT ORDER was established to protect the county from inmate lawsuits over Constitutional rights. However, since the entry of the Final Modified Order, no inmate had ever brought forth a valid claim that the requirements of the order were being violated. Nor had anyone brought a successful challenge to the conditions of confinement at the county jails in general. Thus, the primary effect of the order was to limit the sheriff's ability to respond to the changing needs of the community.

When Noelle became Sheriff in 1995, it was immediately apparent to him that the jail system was on overload. The

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emergency population release plan was being used almost daily and the detention center was increasingly in gridlock. On occasion, corrections deputies were forced to close the jail's booking counter and lock the reception doors.

Plans to expand one of the county's five jails were in action. However, to achieve the immediate goal of reducing the number of early releases, Noelle would need even more beds than were under construction. Voters had approved a levy giving us money to build a new jail, but that was a few years away. Double-bunking MCDC would give some immediate relief, but the federal court order was blocking our ability to squeeze more inmates into the facility. It would take an act of Congress-literally-to allow more inmates into the jail.

COST SAVINGS ACHIEVED THROUGH DOUBLE-BUNKING-

- The cost of adding beds to MCDC was offset within the first 56 days of full operation.
- Double bunking reduced housing costs by \$15 per inmate per day.
- The sheriff's office was able to increase the jail population by 42 percent while adding only 5 percent more staff.

ON APRIL 26, 1996, PRESIDENT Clinton signed the Prison Litigation Reform Act (PLRA). In passing the act, Congress was in effect saying that the federal courts should stop managing local jails. Sheriff Noelle in August 1997 filed a motion to terminate the Jordan Order, arguing that the PLRA mandated that the federal order be lifted. The county also maintained that the jail had been run within the spirit of the order and that it currently met, and would continue to meet, all Constitutional and federal standards.

The court agreed with the county and terminated the order. The sheriff then went before the Board of County Commissioners and received permission to increase the inmate capacity at MCDC from 476 to 676, a self-imposed population cap that would not compromise the jail's safety and security or the Constitutional rights of inmates.

The county immediately began to retrofit 200 general housing rooms in the modular-style corrections facility. In a three-stage process, additional inmates were moved into the jail, and by February 1998 the double-bunked cells were filled.

THE PROSPECT OF WINNING our case in court brought attention to the fact that the matrix scoring guideline had not been updated since its development in 1985. Times had changed, and public attitudes about which charges were the most serious had shifted. A new scoring system was designed, in part, to satisfy public opinion about who should be automatically released when the jail is full.

With the federal cap lifted and MCDC no longer under the constraints of the federal consent decree, we understood that the best way to stay out of court was to control the inmate population ourselves. It made political as well as common sense to self-impose a limit on the number of inmates housed in the MCDC.

The new "Capacity Management Action Plan" orders the identification and release of inmates as needed to remain within a maximum MCDC capacity of 676. The plan and accompanying population release scoring process have been formalized as a county ordinance. The plan's main function is to define a release matrix, but it also establishes a population cap. Jail staff believe they can be accountable for this cap without compromising safety and security or the Constitutional rights of inmates.

BECAUSE OF THE HUGE number of offenders in the county, adding 200 beds here and there will not end the early release of inmates, but it is a step in the right direction. Double bunking is one of many steps the Multnomah County Sheriff's Office is taking to increase its jail bed capacity. We can only hope that someday the "Field of Dreams" analogy will no longer apply. ■

SUMMATION OF THE TERMINATION OF THE JORDAN ORDER FROM COUNSEL'S PERSPECTIVE

The population cap set by the Jordan Order made it impossible for the Sheriff to move forward with plans to increase the capacity of MCDC through double bunking. Double bunking was meant to increase the capacity of MCDC, thereby reducing matrix releases, and also decreasing the cost per inmate of running the facility. Therefore, beginning in 1995, the Sheriff began consulting with County Counsel regarding the legal options available to lift or modify the population cap. At that time, the only feasible option was a motion under Federal Rules of Civil Procedure Rule 60(b)(5). Under this option, the Sheriff would have had the burden to establish that a significant change in facts or law warranted the revision of the decree and that the proposed modification of the decree was suitably tailored to those changed circumstances. This option was particularly onerous, given that it entailed potentially lengthy and costly evidentiary hearings regarding past, current, and future jail operations and conditions. The precedent in other jurisdictions for the success of a motion to modify the Order was not encouraging.

In April 1996, President Clinton signed into law the Prison Litigation Reform Act. The PLRA allowed for the immediate termination of any consent decree governing the operations of a correctional facility unless, at the time the consent decree was entered, the judge made specific findings of

current or ongoing Constitutional violations, that the consent decree was necessary to curb these violations, and that the consent decree was narrowly tailored to address the listed violations. There was no question that the Jordan Order did not contain these findings, and that a motion to terminate the Jordan Order under the PLRA would be appropriate.

Of concern in moving to lift the Jordan Order, however, was the fact that it provided the Sheriff and the County immunity from civil liability for early release of inmates under the matrix system. Although double bunking would increase the capacity of MCDC, it would continue to be necessary to matrix prisoners to avoid the conditions of overcrowding that initially led to the Jordan litigation. In 1989, the Oregon Legislature adopted laws (ORS 169.042 to 169.046, county jail population control plans) that gave counties around the state the option of operating their jails under a statutory scheme similar to that under which Multnomah County was operating in light of the Jordan litigation. Specifically, local county commissioners could commission a study from the local district attorney who, working with the local sheriff, county counsel, and the presiding judge of the county, would recommend a maximum population limit at the facility. The county commission, if satisfied, could then issue an order setting the recommended number as the population limit of the facility.

As a part of this order, the county commission, working with the aforementioned group, would also promulgate an "emergency action plan" addressing the steps to be taken in the event the actual facility population approached the maximum set limit. In other words, they would set up a matrix system for the release of inmates. The statutes offered immunity from (state) liability for good faith releases of inmates during these "emergencies" for those facilities opting to follow this statutory scheme. Therefore, prior to petitioning the Federal Court for termination of the Jordan Order, the County needed to put into place a population emergency plan. On August 7, 1997, the Board of County Commissioners adopted a resolution establishing a population cap for MCDC and a population emergency plan (i.e., a matrix system).

Given that the PLRA was new legislation and was already being challenged on constitutional grounds in other jurisdictions, County Counsel and the Sheriff's Office continued the intensive work on a back-up FRCP 60(b)(5) motion to modify the population cap. In addition, County Counsel notified the attorney who had formerly represented the class of plaintiffs in the Jordan litigation, as well as the ACLU and other interested groups, of the Sheriff's intent to move forward to lift the Jordan Order and institute double bunking. We met with those interested parties and invited their input

into the planning process for double bunking.

Finally, on August 12, 1997, County Counsel filed a Motion and Supporting Memorandum to Terminate Order Pursuant to 18 U.S.C. § 3626. The judge held that motion in abeyance and allowed the law firm of Rieke & Savage to substitute as attorneys for the plaintiff class on August 21, 1997. The plaintiffs then filed two motions (Motion to Reopen the Record and Motion to Declare 18 U.S.C. § 3626 Unconstitutional) as well as a Response to our motion on October 14, 1997. Judge James Redden heard oral arguments on all the motions on November 3, 1997. The judge issued an Opinion and Order on November 7, 1997, granting the County's Motion to Terminate and dismissing plaintiffs motions. Judge Redden held that the PLRA was Constitutional and that the Sheriff was thus entitled to have the Jordan Order terminated. Final Judgment in favor of Multnomah County was entered on February 4, 1998.

Plaintiffs appealed the judge's Opinion and Order to the Ninth Circuit Court of Appeals on December 1, 1997. The appeal was stayed pending the disposition of *Taylor v. United States/State of Arizona*, another case involving the PLRA and its Constitutionality. ■